

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE**

**IN RE REGIONS MORGAN KEEGAN
SECURITIES, DERIVATIVE & ERISA
LITIGATION,**

CASE NO. 2:09-md-2009

This Document Relates To:

**Michael S. Starnes, Michael S. Starnes
Charitable Unitrust, Laura Murchison,
Canale Funeral Directors, Inc., and
Warren Canale,**

Plaintiffs,

v.

**Regions Morgan Keegan Select High
Income Fund, Inc., RMK High
Income Fund, Inc., RMK Strategic
Income Fund, Inc., RMK Advantage
Income Fund, Inc., RMK Multi-Sector
High Income Fund, Inc., Regions
Financial Corporation, RFC Financial
Holding, LLC, Regions Investment
Management, Inc.,**

Defendants.

Case No. 2:13-cv-02839

DEFENDANTS' MOTION FOR RECONSIDERATION

COME NOW Defendants Regions Financial Corporation, RFC Financial Services Holding, LLC, and Regions Investment Management, Inc. (collectively "Defendants"), by and through their undersigned counsel and pursuant to Rule 54(b) of the Federal Rules of Civil Procedure and Local Rule 7.3(b), and respectfully move this Court to reconsider its Order of September 24, 2014 denying in part Defendants' Motion to Dismiss.

Defendants respectfully submit that this Court must reconsider its Order because (1) there has been an intervening change of law with respect to *Police & Fire Ret. Sys. v. Indymac MBS, Inc.*, 721 F.3d 95 (2d Cir. 2013), in light of the fact that the United States Supreme Court has withdrawn its grant of *certiorari* and allowed the Second Circuit's decision to stand; (2) the

Court failed to consider that *Wyser-Pratte Mgmt. Co. v. Telxon Corp.*, 413 F.3d 553 (6th Cir. 2005), continues to constitute binding precedent in the Sixth Circuit, as reflected in the Sixth Circuit's subsequent decision in *In re Vertrue Mktg. & Sales Practices Litig.*, 719 F.3d 474, 480 (6th Cir. 2013); (3) the Court's opinion fails to consider the rules of the arbitration forum and results in differential treatment of arbitration parties; and (4) the Court erred by applying Tennessee law instead of Alabama law with respect to the preclusive effects of Plaintiff Warren Canale's prior state court action.

WHEREFORE, PREMISES CONSIDERED, for the reasons set forth herein, and more fully in the contemporaneously filed Memorandum of Law, Defendants respectfully request that this Court reconsider its Order and dismiss the claims of the remaining Plaintiffs Canale Funeral Directors, Inc. and Warren Canale.

Respectfully submitted this 8th day of October, 2014.

s/ Peter S. Fruin

Peter S. Fruin

MAYNARD, COOPER & GALE, P.C.

1901 Sixth Avenue North
2400 Regions/Harbert Plaza
Birmingham, Alabama 35203-2602
(205) 254-1000
(205) 254-1999 (fax)
pfruin@maynardcooper.com

Counsel for Defendants
Regions Financial Corporation, RFC
Financial Holding, LLC, and Regions
Investment Management, Inc.

OF COUNSEL:

Michael A. Brady
BASS, BERRY & SIMS PLC
The Tower at Peabody Place
100 Peabody Place
Memphis, Tennessee 38103
(901) 543-5900
(901) 543-5999 (fax)
state@bassberry.com
mbrady@bassberry.com

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that on October 8, 2014 a true and correct copy of the foregoing document was forwarded by electronic means through the Court's ECF System upon the following:

H. Naill Falls Jr.
John B. Veach III
Falls & Veach
1143 Sewanee Road
Nashville, TN 37220
615-242-1800

Scott T. Beall
6800 Poplar Avenue
Atrium I, Suite 215
Memphis, TN 38138
901-681-0500

Andrew P. Campbell
Caroline S. Gidiere
20 20th Street North, Suite 2000
Birmingham, AL 35203
205-251-5900

Counsel for Plaintiffs

Kevin C. Logue
Kevin P. Broughel
PAUL HASTINGS LLP
75 East 55th Street
New York, NY 10022
(212) 318-6039
(212) 230-7620 (fax)
kevinlogue@paulhastings.com
kevinbroughel@paulhastings.com

Counsel for Defendants Regions Morgan Keegan Select High Income Fund, Inc., RMK High Income Fund, Inc., RMK Strategic Income Fund, Inc., RMK Advantage Income Fund, Inc., and RMK Multi-Sector High Income Fund, Inc.

s/ Peter S. Fruin

OF COUNSEL